

1 Scott E. Davis
State Bar No. 016160
2 SCOTT E. DAVIS, P.C.
8360 E. Raintree Drive, Suite 140
3 Scottsdale, AZ 85260

4 Telephone: (602) 482-4300
Facsimile: (602) 569-9720
5 email: davis@scottdavispc.com

6 *Attorney for Plaintiff Francene Rosenkrans*

7
8 **UNITED STATES DISTRICT COURT**
9 **DISTRICT OF ARIZONA**

10 Francene Rosenkrans,
11
12 Plaintiff,

13 v.

14 AIG Life Insurance Company; Camden
Property Trust; Camden Property Trust
Disability Plan ,

15 Defendants.
16

Case No.

COMPLAINT

17
18 Now comes the Plaintiff Francene Rosenkrans (hereinafter referred to as "Plaintiff"),
19 by and through her attorney, Scott E. Davis, and complaining against the Defendants, she
20 states:

21 ***Jurisdiction***

22 1. Jurisdiction of the court is based upon the Employee Retirement Income
23 Security Act of 1974 (ERISA); and in particular, 29 U.S.C. §§1132(e)(1) and 1132(f).
24 Those provisions give the district courts jurisdiction to hear civil actions brought to recover
25 employee benefits. In addition, this action may be brought before this Court pursuant to 28
26

1 U.S.C. §1331, which gives the Court jurisdiction over actions that arise under the laws of
2 the United States.

3 *Parties*

4 2. Plaintiff is a resident of Maricopa County, Arizona.

5 3. Upon information and belief, Camden Property Trust (hereinafter referred to
6 as the “Company”) sponsored, administered and purchased a group long-term disability
7 insurance policy which was fully insured by AIG Life Insurance Company (hereinafter
8 referred to as “AIG”). The specific AIG long term disability group insurance policy is
9 known as Group Policy No.: GLTD-50978 (hereinafter referred to as the “Policy”). The
10 Company’s purpose in sponsoring, administering and purchasing the Policy was to provide
11 long-term disability insurance for its employees. Upon information and belief, the AIG
12 Policy may have been included in and part of an employee benefit plan, specifically
13 named the Camden Property Trust Disability Plan (hereinafter referred to as the “Plan”)
14 which may have been created to provide the Company’s employees with welfare benefits.
15 At all times relevant hereto, the Plan constituted an “employee welfare benefit plan” as
16 defined by 29 U.S.C. §1002(1).

17 4. Upon information and belief, AIG functioned as the claim administrator of
18 the policy; however, pursuant to the relevant ERISA regulation, the Company and/or the
19 Plan may not have made a proper delegation or properly vested fiduciary authority or power
20 for claim administration in AIG.

21 5. AIG operated under a conflict of interest in evaluating her long-term
22 disability claim due to the fact that it operated in dual roles as the decision maker with
23 regard to whether Plaintiff was disabled as well as the payor of benefits. AIG’s conflict
24
25
26

1 existed in that if it found Plaintiff was disabled, it was then liable for the payment of her
2 disability benefits.

3 6. The Company, AIG and the Plan conduct business within Maricopa County
4 and all events giving rise to this Complaint occurred within Arizona.

5 *Venue*

6 7. Venue is proper in this district pursuant to 29 U.S.C. §1132(e)(2) and 28
7 U.S.C. §1391.

8 *Nature of the Complaint*

9 8. Incident to her employment, Plaintiff was a covered employee pursuant to
10 the Plan and the relevant Policy and a “participant” as defined by 29 U.S.C. §1002(7).
11 Plaintiff seeks disability income benefits from the Plan and the relevant Policy pursuant to
12 §502(a)(1)(B) of ERISA, 29 U.S.C. §1132(a)(1)(B), as well as any other potential non-
13 disability employee benefits she may be entitled to from the Plan and any other Company
14 Plan, as a result of being found disabled in this action.

15 9. After working for the Company as a loyal employee, Plaintiff became
16 disabled on or about August 21, 1999, due to serious medical conditions and was unable to
17 work in her designated occupation as a Leasing Consultant. Plaintiff has remained disabled
18 as that term is defined in the relevant Policy continuously since that date and has not been
19 able to return to any occupation as a result of her serious medical conditions.

20 10. Following her disability, Plaintiff filed a claim for short term disability
21 benefits which was approved by AIG, and those benefits have been paid and exhausted.

22 11. Following the exhaustion of her short-term disability benefits, Plaintiff then
23 filed for long-term disability benefits under the relevant Policy which was administered by
24 AIG. AIG made every decision in Plaintiff’s long-term disability claim.

1 12. Upon information and belief, the relevant AIG Policy and definition of
2 disability governing Plaintiff's long term disability claim is as follows:

3 "Disability" or "Disabled" means:

- 4 1. You cannot perform each of the material duties of your regular
5 occupation; and
6 2. After benefits have been paid for 24 months, you cannot
7 perform each of the material duties of any gainful occupation
8 for which you are reasonably fitted taking into consideration
9 training, education or experience; or
10 3. You, while unable to perform all of the material duties of your
11 regular occupation on a full-time basis, are:
12 a. Performing at least one of the material duties of your
13 regular occupation or another occupation on a part-time
14 or full-time basis; and
15 b. Earning currently at least 20% less per month than your
16 indexed pre-disability earnings due to that same injury
17 or sickness.

18 13. In support of her claim for long-term disability benefits, Plaintiff submitted to
19 AIG, medical evidence which supported her allegation that she met any definition of
20 disability as defined in the relevant Policy.

21 14. AIG approved Plaintiff's long-term disability claim and paid her long-term
22 disability benefits through July 10, 2014, for a total of approximately fourteen (14) years.

23 15. During the period of time Plaintiff was receiving long-term disability benefits,
24 she also applied for, was approved for and is currently receiving Social Security disability
25 benefits through the Social Security Administration (hereinafter referred to as "SSA").

26 16. Plaintiff informed AIG that her claim for Social Security disability benefits
had been approved and she submitted to AIG documentation from the SSA which
confirmed the approval.

 17. The SSA found Plaintiff became disabled from engaging in any gainful
occupation which may have existed in the national economy.

1 18. The SSA's definition of disability is more stringent and difficult to meet than
2 the aforementioned definition of disability in the AIG Policy for the first 24 months of
3 disability and substantially similar to the Policy's definition of disability after the first 24
4 months of disability. Therefore, the SSA's approval of Plaintiff's claim and the fact that
5 SSA has continued to pay her benefits for so many years is relevant evidence for this Court
6 to consider with regard to the unreasonableness of AIG's decision to terminate and deny
7 Plaintiff's claim and benefits.

8 19. In a letter dated July 17, 2014 AIG informed Plaintiff it was terminating her
9 long term disability benefits beyond July 10, 2014, without any medical documentation or
10 evidence that Plaintiff's medical conditions had improved or that she was capable of
11 returning to work.

12 20. Pursuant to 29 U.S.C. §1133, Plaintiff timely appealed AIG's July 10, 2014
13 termination of her benefits.

14 21. In support of her appeal and claim for long-term disability benefits, Plaintiff
15 submitted to AIG additional medical evidence demonstrating that she met any definition of
16 disability set forth in the Policy.

17 22. In a letter dated September 17, 2014, AIG informed Plaintiff it was again
18 denying her claim for long-term disability benefits, which Plaintiff timely appealed.

19 23. In support of her appeal and claim for long-term disability benefits, Plaintiff
20 submitted to AIG additional medical evidence demonstrating that she met any definition of
21 disability set forth in the Policy.

22 24. As part of its review of Plaintiff's claims for disability benefits, AIG obtained
23 a medical records only "paper review" of Plaintiff's claim from Randall King, M.D., who is
24 consulting physician for the University Disability Consortium (hereinafter "UDC"). As the
25
26

1 attached interrogatory answers confirm (*See* Exhibit "A" to this Complaint), UDC has a
2 long business relationship with the disability insurance industry by providing the type of
3 medical records reviews as occurred in this case and Plaintiff alleges UDC may derive a
4 significant amount of its annual revenue from its relationship with the industry. As a result,
5 Plaintiff alleges that in the review of her claim, Dr. King was not independent, objective or
6 impartial with regard to the opinions he rendered regarding whether or not Plaintiff was
7 disabled.

8 25. Upon information and belief, Plaintiff believes Dr. King may be long time
9 medical consultant for the disability insurance industry, UDC and/or AIG. As a result,
10 Plaintiff believes Dr. King may have an incentive to protect his own consulting relationship
11 with the disability insurance industry, UDC and/or AIG by providing medical records only
12 paper reviews, which selectively review or ignore evidence such as occurred in Plaintiff's
13 claim, in order to provide opinions and report(s) which are favorable to insurance
14 companies and/or AIG and which supported the denial of Plaintiff's long-term disability
15 claim.

16 26. In a letter dated February 26, 2015, AIG notified Plaintiff it had denied her
17 claim for long-term disability benefits under the Policy. In the letter, AIG also notified
18 Plaintiff she had exhausted her administrative levels of review and could file a civil action
19 lawsuit in federal court pursuant to ERISA.

20 27. Upon information and belief, AIG's February 26, 2015 denial letter confirms
21 it failed to provide a full and fair review, and in the process committed several procedural
22 violations pursuant to ERISA due to among other reasons, completely failing to credit,
23 reference, consider, and/or selectively reviewing and/or de-emphasizing most, if not all of
24 Plaintiff's reliable evidence.

1 28. In evaluating Plaintiff's claim on appeal, AIG had an obligation pursuant to
2 ERISA to administer Plaintiff's claim "solely in her best interests and other participants"
3 which it failed to do.¹

4 29. AIG failed to adequately investigate and failed to engage Plaintiff in a
5 dialogue during the appeal of her claim with regard to what evidence was necessary so
6 Plaintiff could perfect her appeal and claim. AIG's failure to investigate the claim and to
7 engage in this dialogue or to obtain the evidence it believed was important to perfect
8 Plaintiff's claim is a violation of ERISA and Ninth Circuit case law, and a reason she did not
9 receive a full and fair review.

10 30. Plaintiff alleges AIG provided an unlawful review which was neither full nor
11 fair and that violated ERISA, specifically, 29 U.S.C. § 2560.503-1, by failing to adequately
12 investigate her claim; by providing a one sided review of Plaintiff's claim that failed to
13 consider all the evidence submitted by her and/or de-emphasizing medical evidence which
14 supported Plaintiff's claim; by failing to adequately consider the fact that SSA continued
15 to find Plaintiff was entitled to SSA disability benefits; by failing to credit Plaintiff's
16 reliable evidence; by disregarding Plaintiff's self-reported symptoms; failing to consider all
17 the diagnoses and/or limitations set forth in her medical evidence as well as the impact the
18 combination of those diagnoses and impairments would have on her ability to work; by
19

20
21 ¹ It sets forth a special standard of care upon a plan administrator, namely, that the
22 administrator "discharge [its] duties" in respect to discretionary claims processing "solely
23 in the interests of the participants and beneficiaries" of the plan, § 1104(a)(1); it
24 simultaneously underscores the particular importance of accurate claims processing by
25 insisting that administrators "provide a 'full and fair review' of claim denials," *Firestone*,
26 489 U.S., at 113, 109 S. Ct. 948, 103 L. Ed. 2d 80 (quoting § 1133(2)); and it
supplements marketplace and regulatory controls with judicial review of individual claim
denials, see § 1132(a)(1)(B). *Metro. Life Ins. Co. v. Glenn*, 128 S. Ct. 2343, 2350 (U.S.
2008).

1 failing to engage Plaintiff in a dialogue so she could perfect her claim and failing to consider
2 the impact the side effects from Plaintiff's medications would have on her ability to engage
3 in any occupation.

4 31. Plaintiff alleges a reason AIG provided an unlawful review which was neither
5 full nor fair and that violated ERISA, specifically, 29 U.S.C. § 2560.503-1, is due to its
6 conflict of interest that manifested as a result of the dual roles AIG undertook as the
7 decision maker and the payor of benefits. AIG's conflict of interest provided it with a
8 financial incentive to deny Plaintiff's claim, thereby saving itself money.

9 32. Plaintiff is entitled to discovery regarding AIG's aforementioned conflicts of
10 interest. UDC's and any individual who reviewed her claim and the Court may properly
11 weigh and consider extrinsic evidence regarding the nature, extent and effect of *any*
12 conflict of interest and/or ERISA procedural violation which may have impacted or
13 influenced AIG's decision to deny her claim.

14 33. With regard to whether Plaintiff meets the definition of disability set forth in
15 the policy, the standard of review for the Court to apply is *de novo*, because even though the
16 Policy unlawfully contains discretionary language, it was issued in the State of Texas where
17 Camden Property Trust is headquartered and Texas banned discretionary clauses in
18 disability policies in 2011. In denying her claim, Plaintiff alleges AIG failed to provide a
19 full and fair review pursuant to ERISA, and AIG's decision to terminate her benefits is *de*
20 *novo* wrong. If the Court concludes the Policy confers discretion and that the standard of
21 review is for an abuse of discretion, Plaintiff alleges AIG's unlawful ERISA violations as
22 referenced herein are an abuse of discretion, that they precluded a Full and Fair review as
23 required by ERISA and are so flagrant that they justify *de novo* review.

1 34. As a direct result of AIG's decision to deny Plaintiff's disability claim, she
2 has been injured and suffered damages in the form of lost long term disability benefits, in
3 addition to other potential non-disability employee benefits she may have been entitled to
4 receive or was receiving through or from the Plan, from any other Company Plan and/or the
5 Company as a result of being found disabled. Plaintiff believes other potential non-
6 disability employee benefits may include but not be limited to, health and other insurance
7 related coverage or benefits, retirement benefits or a pension, life insurance coverage and/or
8 the waiver of the premium on a life insurance policy which provided coverage for her and
9 her family/dependents.

10 35. Pursuant to 29 U.S.C. §1132, Plaintiff is entitled to recover unpaid benefits,
11 prejudgment interest, reasonable attorney's fees and costs from Defendants.

12 36. Plaintiff is entitled to prejudgment interest at the legal rate pursuant to A.R.S.
13 §20-462, or at such other rate as is appropriate to compensate her for losses she incurred
14 as a result of Defendants' nonpayment of benefits.

15 WHEREFORE, Plaintiff prays for judgment as follows:

16 A. For an Order finding that Plaintiff meets the definition of disability set forth
17 in the Plan and/or Policy and requiring Defendants to pay her the long-term disability
18 benefits she is due as well as any other non-disability employee benefits she may be
19 entitled to as a result of being found disabled, from the date she was first denied all of
20 these benefits through the date of judgment and prejudgment interest thereon;

21 B. For an Order directing Defendants to continue paying Plaintiff the
22 aforementioned benefits until such time as she meets the conditions for the termination of
23 benefits;

1 C. For attorney's fees and costs incurred as a result of prosecuting this suit
2 pursuant to 29 U.S.C. §1132(g); and

3 D. For such other and further relief as the Court deems just and proper.

4 DATED this 18th day of December, 2015.

5 SCOTT E. DAVIS. P.C.

6 By: /s/ Scott E. Davis
7 Scott E. Davis
8 Attorney for Plaintiff
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26